

Notice of Allowability

Application No.

10/812,864

Examiner

Wendy C Haas

Applicant(s)

MIYAZAKI ET AL.

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3/29/2004.
2. ☒ The allowed claim(s) is/are the claim.
3. ☒ The drawings filed on 29 March 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 3/29/4 and 8/16/4
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 3/16/5
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in telephone interviews with Attorney Cindy Bonner on March 10 and 16, 2005.

The application has been amended as follows:

- A. Page 1, lines 3-5 have been deleted and are replaced by the following recitation:

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BOTANICAL DESIGNATION

Petunia hybrida

VARIETY DENOMINATION

'Sunbabuve' --.

- B. Page 1, line 17, after the word "varieties" the recitation – known to the inventors – has been inserted.
- C. Page 1, line 19, "The" has been changed to – These --.
- D. Page 1, line 20, the word " "Revolution" " has been changed to – the Revolution series cultivars --.
- E. Page 1, line 30, after the word "disease" the recitation – known to the inventors – has been inserted.
- F. Page 1, line 35 has been deleted.
- G. Page 1, line 37 "non-patented" has been changed to – unpatented --.

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- H. Page 2, line 1, the word "of" has been changed to – that created --.
- I. Page 2, line 9, the first instance of the word "of" has been changed to – that created --.
- J. Page 2, line 21, the word "cutting" has been changed to –cuttings--.
- K. Page 2, line 22, the recitation – the subject of – has been added after the word "was".
- L. Page 2, lines 25 and 26, the word "non-patented" has been changed to – unpatented --.
- M. Page 2, lines 33-35~~2~~ have been deleted and are replaced by the recitation: -- in accordance with the R. H. S. Colour Chart.
- N. Page 3, line 2, after the word "available" the recitation – , known to the inventors, -- has been added.
- O. Page 4, line 22, "FIG." has been changed to – Fig. --.
- P. Page 4, line 25, "FIG." has been changed to – Fig. --.
- Q. Page 4, line 33, the recitation – as grown in typical outdoor conditions – has been added after the word "observed".
- R. Page 4, line 34, the following recitation has been added after "7 months.": -- The average day temperature is approximately 23°C and the average night temperature is approximately 15°C.--.
- S. Page 5, line 10, "Thickness" has been changed to – Diameter --.
- T. Page 5, line 11, the word "Normal" has been changed to – Present and typical of the species --.
- U. Page 5, line 12, the word "Abundant" has been replaced with the recitation -- , Approximately 20 branches per plant --.
- V. Page 5, line 32, the word – Flower – has been inserted before "Diameter".

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W. Page 5, after line 32, a new line has been added: -- Flower Depth: Approximately 3.0 cm. --.

X. Page 5, lines 33-36 have been deleted and are replaced with the following:

-- Flower Color:

Upper Petal Surface Color: near R.H.S. 92D with R.H.S. N87A veins.

Lower Petal Surface Color: near R.H.S. 92D with R.H.S. N87A veins.

Inside color of flower throat: R.H.S. 86D.

Outside color of flower tube: R.H.S. 81D.

Calyx: Narrow, 5 sepals fused at the base.

Diameter: Approximately 15 mm.

Depth: Approximately 10 mm.

Color (upper and lower surfaces): near R.H.S. 147B.

Texture (both surfaces): Smooth.--.

Y. Page 6, lines 4 and 5 have been deleted and are replaced by the following recitation:

-- Peduncle:

Diameter: Approximately 0.7 mm.

Length: Approximately 1.2 cm.

Color: near R.H.S. 145C.

Texture: Smooth. --.

Z. Page 6, line 6 has been deleted.

AA. Page 6, line 9, after "pests." the following has been added: -- 'Sunbabuve' has a low temperature tolerance of at least 5°C. --.

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BB. Page 6, after line 9, a new line has been added: -- Seed production has not been observed.

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Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C. Haas whose telephone number is (571) 272-0976. The examiner can normally be reached on Monday through Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-0811.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

W. C. Haas

**KENT BELL
PRIMARY EXAMINER**

Kent G. Bell